

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1581 OF 1977

Shree Krishna Woolen Mills]
Private Limited, a Company]
registered under the provisions]
of Companies Act, 1956 and]
having their registered office]
at 16, Dr. D.N.Road, Khandelwal]
Bhavan, Fort, Bombay 400 001.].. Plaintiffs.

Versus.

The Board of Trustees of the]
Port of Bombay being Statutory]
Corporation constituted under]
the Major Port Trusts Act, 38]
of 1963 as amended by the]
Major Port Trusts (Amendment)]
Act, 29 of 1974, having their]
Principal place of Business at]
"Vijay Deep", Shoorji]
Vallabhdas Marg, Bombay 400002].. Defendants.

Mr. K.K.V.Kurup for the Plaintiffs.

Mr. U.J.Makhija i/b. Mulla & Mulla for the Defendants.

ALONGWITH

SUIT NO. 1407 OF 1979

The Board of Trustees of the]
Port of Bombay being Statutory]
Corporation constituted under]
the Major Port Trusts Act, 38]
of 1963 as amended by the]
Major Port Trusts (Amendment)]
Act, 29 of 1974, having their]
Principal place of Business at]
"Vijay Deep", Shoorji]
Vallabhdas Marg, Bombay 400002].. Plaintiffs.

Versus

Shree Krishna Woolen Mills]
Private Limited, a Company]
registered under the provisions]
of Companies Act, 1956 and]
having their registered office]
at 16, Dr. D.N.Road,Khandelwal]
Bhavan, Fort, Bombay 400 001.].. Defendants.

Mr. U.J.Makhija i/b. Mulla & Mulla for the Plaintiffs.

Mr. K.K.V.Kurup for the Defendants.

CORAM : S.K.Shah, J.

DATE OF RESERVING THE JUDGMENT : March 19, 2004

DATE OF PRONOUNCEMENT OF THE JUDGMENT: March 26, 2004.

-:ORAL JUDGMENT:

1. Both these Suits are being disposed of by a common Judgment as the parties are the same, the pleadings of the parties are the same and the parties have agreed to read the evidence recorded in one suit in another suit, the claims of the parties have been arisen within the same facts. For the sake of convenience the parties are referred to as the Plaintiffs and Defendants as per Suit No. 1581 of 1977.

2. The Plaintiffs have filed this suit No.1581 of 1977 for recovery of damages.

3. The Plaintiff is a company registered under the companies Act, 1956 having the business of manufacturers and are also dealers in woollen products.

On 13th March, 1975, the Plaintiff had purchased from Black & Bear Exports Private Limited, a company incorporated as per the laws of Australia, 179 bales of waste wool consisting of 57 coloured wool waste, 68 bales of worsted thread wool waste and 54 bales of worsted thread wool. Out of the said 179 bales, 57 bales of coloured wool waste and 68 bales of worsted thread wool waste were to be shipped from Melbourne, Australia, from the said Company. Accordingly, they were shipped and the vessel carrying those wools arrived at Port of Bombay on 14th March, 1975. The bales were manifested on the same day under No.3747, the bales were presented to the Customs Authorities for examination and to find out whether the same were in conformity with the Import Licence.

. The defendants are the trustees constituted under the Bombay Port Trusts Act and were in-charge of the aforesaid goods landed at the Port of Bombay. By a letter, dated 18th August, 1975, the defendants had informed the Plaintiffs that out of 179 bales, 173 bales were lying at Wadi Bunder warehouse and six bales were not traceable. The Customs Authorities cleared 54 bales out of 173 bales and the Plaintiff took the delivery thereof on 27.11.1975. Out of remaining 119 bales, lying at Wadibunder, the Reports in respect of

54 bales were favourable from the Customs Authorities. Thus, according to the Customs Authorities 68 bales were found by the Customs Authorities to be not in conformity and, therefore, by Order dated 7th June, 1976 they were ordered to be confiscated. The Order further gave option to the Plaintiffs to pay, in lieu of confiscation, a fine of Rs. 20,000/- and in case of exercise of that option, the Customs Authorities gave to the Plaintiff one months' time from the date of the Order to pay the fine. Consequently, 68 bales continue to remain with the defendants. There is no dispute as to the fact that the Plaintiffs did not pay the fine and, therefore, the Order of confiscation in respect of 68 bales came to be continued.

. The Plaintiffs had filed an Appeal against the said Order to the Appellate Authority on 10th August, 1976. The Appellate Collector of Customs on 20.8.1976 ordered re-examination. Accordingly, the samples were drawn on 26.8.1976 and were sent for testing. Those samples, however, misplaced and, therefore, the fresh examination order was passed on 22nd February, 1977 by the Customs Authorities.

4. It is alleged by the Plaintiffs that when they went to draw fresh samples, they could not locate the

said goods. On 4th March, 1977, the Plaintiffs learnt that the goods, namely, 68 bales were already sold on or about 15th January, 1977 under lot No. E/6869 by the defendants. Thereafter on 9th May, 1977, the Assistant Docks Manager of the defendants made a demand from the Plaintiff of Rs. 54,958.74 Ps. being the Port Trust Charges, accrued due under Section 48(d) read with Section 59 of the Major Port Trusts Act, 1963. By another letter, dated 13th July, 1977, received from the Assistant Dock Manager, the demand of the same amount was made, within 15 days and informed that else the defendants would take legal action.

5. The Plaintiffs have alleged that selling of 68 bales was illegal and, therefore, claimed damages of Rs. 2,27,760 including the value of the said bales. Hence, the Plaintiffs have filed the suit for recovery of damages, including the value of the goods.

. So far as the Suit No. 1407 is concerned, the Defendants have claimed the sum of Rs. 57,562.11 Ps. with interest thereon @ 12% per annum from the date of the Suit till the payment or realisation of the decretal amount and costs of the suit.

6. The defendants resisted the Suit by their

Written Statement, dated 1st February, 1984. They contend that by a letter dated 27.2.1976, they had pointed out that 68 bales were lying at Wadibunder warehouse and have been listed for sale by auction, in view of the fact that the same had not been cleared for about 10 months. They further contend that by letter dated 9th April, 1976, the Plaintiffs alleged that the goods have been detained by the Customs Authorities and, therefore, requested the defendants to withdraw those goods from auction. Thereafter, by letter dated 29th June, 1976, the defendants informed the Plaintiffs that the said consignment was being put up for sale and requested the Plaintiffs to clear the consignment within 10 days from the receipt of the said letter. Thereafter, again by a letter dated 14.7.1976, Plaintiffs requested the defendants to withdraw the goods from auction. Thereafter by a letter dated 20.7.76, the defendants requested the Plaintiffs to lodge a deposit of Rs. 10,000/- so as to avoid the auction of the goods. However, the Plaintiffs failed and neglected to deposit that amount. They further contend that as a result of the same, from the date of confiscation Order was passed by the Customs Authorities, the said goods continue to remain confiscated to the Government. The Plaintiffs neither paid the fine of Rs. 20,000/- nor deposited the amount

of Rs. 10,000/- with the defendants. Under the circumstances, the goods confiscated remained confiscated with the Government and they were entitled to sell the goods for recovery of the accrued charges. Accordingly, the goods came to be sold on 13.1.1977 for Rs. 56,000/-. They contend that they sold the goods after obtaining the requisite approval from the Customs Authorities, as such, they claim dismissal of the Suit.

7. The Defendants have filed Suit No. 1407 of 1979 for recovery of the sum of Rs. 57,562.11 Ps. with interest thereon @ 12% per annum from the date of the Suit till the realisation of the decretal amount, being the amount specified in Exhibit 'B' to the plaint. The Defendants (Plaintiffs in Suit No. 1407/1979) have claimed this amount on account of their B.P.T.Charges due on the consignment of 68 bales coloured wool waste, Wharfage @ 124.38 Ps., Rs. 8,582.22 Ps. on account of demurrage for 69 days at old rate, Rs. 14,646.40 Ps. on account of Demurrage for 92 days at new rate of Rs.16.00 per ton and Rs. 36,200.00 Ps. on account of demurrage for 250 days less the charges recovered from the sale proceeds as per T.R. No. 699 of 1968 amounting to Rs. 1,990.89 Ps. The balance Port Trust Charges as claimed are 57,562.11 Ps. The details of which are mentioned in Exhibit 'B' to the plaint in

Suit No. 1407 of 1979.

8. The defendants alleged in their Suit (Plaintiffs in Suit NO. 1407/1979) that the goods comprising the said consignment were not cleared within two months from landing. The goods landed on 14.4.1975. The free days of the cargo of two consignments were 16th April, 1976 and 22nd April, 1976 respectively. The Plaintiffs were liable to take delivery of the said consignment within seven days from the date of landing of the goods and to pay Wharfage and other charges, which accrued due on that date, payable to the defendants (Plaintiffs in Suit No. 1407/1979). However, the goods came to be confiscated by the Customs Authorities by Order dated 7th June, 1976. The defendants further alleged in their plaint (Suit No. 1407/1979) that the defendants (Plaintiffs in Suit No. 1581/77) failed and neglected to take the delivery and remove the said consignment and therefore they were liable to pay the aforesaid charges up to the date of confiscation of the goods i.e. 7th June, 1976. Therefore, they have filed the aforesaid Suit for recovery of the aforesaid charges.

9. The defendants (Plaintiffs in Suit NO. 1581 of 1977) have filed their Written Statement in the Suit and resisted the claim. They contend that the claim

was barred by limitation. Their defence was the same as per their allegations in Suit No. 1581/77. They contend that the defendants have no right to claim demurrage. They contend in their Written Statement that this Suit has been filed to counter-blast to their Suit NO. 1581/77. As such the Plaintiffs (defendants in Suit No. 1407/1979) claim dismissal of the suit No. 1407/1979.

10. In view of the rival pleadings of the parties, the following issues are framed in Suit No.1581/77 and I record my findings thereon against each of them, for the reasons discussed below :-

ISSUES

FINDINGS.

- (1) Do Plaintiffs prove that 68 ... In negative bales of wool were sold without any authority by the defendants on 13th January, 1977 or there about?
- (2) Whether the Suit claim is ... In negative barred by limitation under Section 120 of the Major Port

Trusts Act, 1963?

- | | | | |
|-----|---|-------------------|--|
| (3) | Whether the suit is bad
for want of statutory notice
under Section 120 of the Major
Port Trusts Act, 1963? | ... | Does not
survive. |
| (4) | Do Plaintiffs prove damages
of Rs. 2,27,760/-? | ... | In negative |
| (5) | Are Plaintiffs entitled to
recover the said damages
from the defendants ? | ...
...
... | In negative
in view of
finding on
on Issue
No.4. |
| (6) | What decree or Order | | The Suit is
dismissed. |

10. In view of the rival pleadings of the parties, the following issues are framed in Suit No.1407 of 1979 and I record my findings thereon against each of them , for the reasons discussed below :-

ISSUES

FINDINGS.

- | | | |
|-----|---|-----------------------|
| (1) | Do Plaintiffs prove that ...
68 bales of wool were with
the Port from April,1975 to
13th January,1977 ? | In the
affirmative |
| (2) | If so, whether they prove ...
the claim for port trust
charges to the tune of
Rs.57,562.11 Ps. | In the
affirmative |
| (3) | Whether the defendants ...
prove that in respect of
68 bales of wool Customs
formalities were not
completed and,therefore,
the plaintiffs were not
entitled to sell the
same ? | In the
negative. |
| (4) | Are Plaintiffs entitled ...
to Rs. 57,562.11 Ps. ? | In the
affirmative |
| (5) | What decree or order? ... | Suit is
decreed. |

REASONING IN RESPECT OF SUIT NO. 1581 OF 1977:

10. AS TO ISSUE NO.1 :

. There is no dispute as to the fact that the Plaintiffs had imported 179 bales from Australia and they had arrived at Bombay Port on 14th April, 1975. There is also no dispute as to the fact that out of these bales, the Plaintiffs had taken delivery of 54 bales after customs clearance. Six bales were untraceable. Thus, total bales which remained undelivered were 119 bales. Out of these 119 bales, except 68 bales, the delivery of the rest of the bales was taken by the defendants. It is further undisputed that by Order dated 7th June, 1976, 68 bales were Ordered to be confiscated by the Assistant Collector of Customs. The said Order is produced at Exhibit 6. The Order read thus :-

" I, therefore, order that the goods in question shall be confiscated under Section 111(d) of the Customs Act, 1962, read with Section 3 of the Import and Export (Control) Act, 1947. I, however allow under Section 125 of the Customs Act, 1962 an option to pay in lieu of such confiscation a fine of Rs. 20,000/- (Rupees

twenty thousand only) and clear the goods into town. This option should be exercised within a month from the date of this order or within such extended period as may be allowed on good and sufficient cause being shown to the satisfaction of the adjudication authority. In fixing the redumption fine have taken into consideration the substantial demurrage and reduced the ITC fine proportionately."

. After this, the Plaintiff had filed an Appeal to the Appellate Collector of Customs on 10th August, 1976. On 20th August, 1976, the Customs Authority has granted re-examination of the samples. Accordingly, the samples were drawn on 30th August, 1976, however, those samples were misplaced. It is further undisputed that the fresh samples were to be collected, but the goods were already sold by the defendants. As such, it is submitted at the bar that the appeal became infructuous and came to be dismissed.

. It is admitted by the Plaintiffs' witness in cross-examination that as a result of the confiscation, the goods stood confiscated to the Government. It is also admitted by the witness that the option of paying fine of Rs. 20,000/- was given to the Plaintiff, was

not exercised and, therefore, the goods continued to remain confiscated with the Government. The witness further admitted that the goods came to be sold after confiscation.

. In view of this position, the learned Counsel for the defendants vehemently submitted that the Plaintiff did not have right to claim the goods at all as they remained confiscated with the Government. Therefore, it is submitted by the learned Counsel for the defendants, that the Plaintiffs have no right to claim any damages for those goods, as those were sold by the defendants, when they continued to remain confiscated and the Plaintiffs had no ownership over the same. In this view of the matter, the Plaintiffs cannot claim any damages in respect of the said goods. I find force in the contention. When the goods remained confiscated, the Plaintiffs had no right to claim damages.

. Even otherwise, the evidence clearly indicates that by a letter dated 27th February, 1976, the defendants had pointed out to the Plaintiffs that the bales were lying at Wadibunder warehouse and had been listed for sale by auction because the Plaintiffs had not cleared the goods for about 10 months. Thereafter,

by letter dated 9th April, 1976, the Plaintiffs communicated to the defendants that goods had been detained by the Customs Authorities and that therefore, the defendants were requested to withdraw the said bales from auction. The defendants, by a letter dated 29th June, 1976 informed the Plaintiffs that the consignment was being put up for sale and requested the Plaintiffs to clear the consignment within 10 days from the receipt of the letter. However, the Plaintiffs failed and neglected to do so. Thereafter by a letter dated 30th July, 1976, the defendants again requested the Plaintiffs to lodge a deposit of the sum of Rs. 10,000/-, which the Plaintiffs failed and neglected to deposit. It was, thereafter that the defendants, after getting clearance from the customs, sold the goods for a consideration of Rs. 56,000/-.

. It is contended by the learned Counsel for the defendants that the Plaintiffs are neither entitled to receive the charges by way of damages beyond the period of seven days' free period nor any other charges. Here in this case, it is clearly seen that the Plaintiffs had not bothered to pay any charges for the period for which the goods were lying with the defendants prior to confiscation of the said goods, by order dated 7th June, 1976. Even the said confiscation was with prior

intimation to the Plaintiffs and after getting clearance from the Customs, the goods came to be sold on 13th January, 1977.

. In this regard, the learned Counsel for the defendants had relied on a decision rendered by the Apex Court, reported in **JT 1995 (2) SC 452 in case of International Airports Authority of India Vs. Grand Slam National and Others**. Therefore, there is no difficulty in coming to a conclusion that the defendants had right to sell the goods for recovery of their charges up to the date of confiscation. Therefore, the issue No. 1 shall have to be answered in the negative and accordingly it is answered in the negative.

11. AS TO ISSUE NO. 2:

. The Suit having been filed within the period of three years from the date of sale of the goods by the defendants i.e. on 13.1.1977, the suit is well within limitation. Therefore, the issue No.2 is answered in the negative.

12. AS TO ISSUE NO. 3:

. This issue does not survive because no submissions have been made by the learned Counsel on either side on this issue. Hence, the issue is answered accordingly.

13. AS TO ISSUE NO.4. :

. With regard to this issue, the Plaintiffs are not entitled to damages as the sale of the goods by the defendants was within their right. Even otherwise, the Plaintiffs have led no evidence to prove as to how they suffered the damages of Rs. 2,27,760/-, which are claimed on account of value of the goods and the amount of loss suffered by the Plaintiffs for wrongful, illegal and in contravention of the provisions of law, for sale of 68 bales by the defendants. However, in this regard, the Plaintiffs have led absolutely no evidence. As such, this issue is answered in the negative.

14. AS TO ISSUE NO. 5.:

. This issue will have to be answered in negative in view of the finding recorded against issue No.4 and, therefore, the suit is liable to be dismissed.

15. AS TO ISSUE NO. 1 & 2 :

. So far as the claim of the defendants (Plaintiffs in Suit No. 1407/1979) is concerned, the learned Counsel for the defendants had clarified that they have claimed demurrage charges up to the date of the confiscation i.e. 7th June, 1976 and not up to the date of the Sale, which is clear from the Exhibit 'B' to the plaint in Suit NO. 1407/1979. The demurrage is claimed as detailed in Exhibit 'B' to the plaint from 16.4.1975 to 6.6.1976 only.

. As discussed above, the defendants are entitled to the Suit claim i.e. demurrage claimed by them as detailed in Exhibit 'B' to the plaint. They have also deducted the amount received by them by way of sale of goods amounting to Rs. 1990.89 Ps. In view of this position, the issue No. 1 and 2 are answered in the affirmative, because the charges as claimed were only up to 6.6.19976.

16. AS TO ISSUE NO. 3 :

. As discussed above, the defendants failed to prove their claim by satisfactory evidence and,

therefore, the issue is answered in the negative.

17. AS TO ISSUE NO. 4 & 5 :

. In view of the aforesaid discussion and my findings recorded against the issue Nos. 1 and 2, these issues shall have to be answered in favour of the Plaintiffs. Hence, the issue No. 4 is answered in the affirmative. Consequently, the following order :-

ORDER IN SUIT NO. 1581 OF 1977.

1. The Suit is dismissed with no orders as to the costs.

ORDER IN SUIT NO. 1407 OF 1979

1. The Suit is decreed.

2. The defendants i.e. Shree Krishna Woolen Mills Private Limited, shall pay to the Plaintiffs i.e. the Board of Trustees of the Port of Bombay the sum of Rs.57,562.11 Ps. with interest @ 6% per annum from the date of the Suit till the realisation of the decretal amount.

3. Under the circumstances of the Suit, no Orders as to the costs.

4. A decree be drawn up accordingly.

5. True Copy of this Judgment be kept in Suit No. 1581/1977 and the Original be kept in Suit No. 1407 of 1979.

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[S.K.Shah, J.]

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GR JD.No.4/98

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 1581 OF 1977
ALONGWITH
SUIT NO. 1407 OF 1979

Date of Decision : March 26, 2004.

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?
2. To be referred to the Reporters or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?
5. Whether it is to be circulated to the Civil Judges ?
6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?
